

ORIGINAL

1

2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

3

-----X
ADRIAN SCHOOLCRAFT,

4

PLAINTIFF,

5

-against-

Case No:
10-CIV-6005

6

7

THE CITY OF NEW YORK, DEPUTY CHIEF MICHAEL
MARINO, Tax id. 873220, Individually and in
8 his official capacity, ASSISTANT CHIEF
PATROL BOROUGH BROOKLYN NORTH GERALD
9 NELSON, Tax id. 912370, Individually and in
his Official Capacity, DEPUTY INSPECTOR
10 STEVEN MAURIELLO, Tax Id. 895117,
Individually and in his official Capacity,
11 CAPTAIN THEODORE LAUTERBORN, Tax Id.
897840, Individually and in his Official
12 Capacity, LIEUTENANT JOSEPH GEOFF, Tax Id.
894025, Individually and in his Official
13 Capacity, Sgt. Frederick Sawyer, Shield No.
2576, Individually and in his Official
14 Capacity, SERGEANT KURT DUNCAN, Shield No.
2483, Individually and in his Official
15 Capacity, LIEUTENANT TIMOTHY CAUGHEY, Tax
Id. 885374, Individually and in his
16 Official Capacity, SERGEANT SHANTEL JAMES,
Shield No. 3004, and P.O.'s "JOHN DOE"
17 1-50, Individually and in their Official
Capacity (the name John Doe being
18 fictitious, as the true names are presently
unknown) (collectively referred to as "NYPD
19 defendants")
-----X

20

21

Date: September 23, 2014

22

Time: 9:24 A.M.

23

24

25

(DEPOSITION OF ROY LUBIT, M.D., Ph.D.)

1

2

F E D E R A L S T I P U L A T I O N S

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

IT IS HEREBY STIPULATED AND AGREED by and between the counsel for the respective parties herein that the sealing, filing and certification of the within deposition be waived; that the original of the deposition may be signed and sworn to by the witness before anyone authorized to administer an oath, with the same effect as if signed before a Judge of the Court; that an unsigned copy of the deposition may be used with the same force and effect as if signed by the witness, 30 days after service of the original & 1 copy of same upon counsel for the witness.

IT IS FURTHER STIPULATED AND AGREED that all objections except as to form, are reserved to the time of trial.

* * * *

1 R. LUBIT, M.D., Ph.D.

2 R O Y L U B I T, called as a witness,
3 having been first duly affirmed by a Notary
4 Public of the State of New York, was
5 examined and testified as follows:

6 EXAMINATION BY:

7 MR. RADOMISLI:

8 Q. Please state your name for the
9 record.

10 A. Roy Lubit.

11 Q. What is your address?

12 A. 165 west End Avenue, 3K, New
13 York 10023.

14 Q. Did you bring any materials you
15 with related to your --

16 MR. SMITH: We're reserving the
17 right to read and sign the
18 transcript.

19 A. I have a copy of my report.

20 Q. Did you bring anything else
21 with you?

22 A. Unless I accidentally grabbed
23 other papers, no.

24 Q. Do you have a file regarding
25 this case at your office or home somewhere?

1 R. LUBIT, M.D., Ph.D.

2 A. Yes.

3 Q. And what's in that file?

4 A. Transcripts of various
5 depositions. I'm not -- I don't remember
6 very well what I printed out, put on paper
7 and kept electronically, so I can't tell
8 you exactly which depositions, which papers
9 I have electronically and which ones I have
10 in paper form.

11 Q. Well, if you look at your
12 report now --

13 MR. RADOMISLI: Why don't we
14 have this Expert Disclosure marked as
15 Exhibit A?

16 (Whereupon, the aforementioned
17 document entitled Plaintiff's Expert
18 Disclosures dated August 11, 2014 was
19 marked as Defendants' Exhibit A for
20 identification as of this date by the
21 Reporter.)

22 MR. RADOMISLI: Off the record.

23 (Whereupon, an off-the-record
24 discussion was held.)

25 MR. SMITH: So Exhibit A is a

1 R. LUBIT, M.D., Ph.D.
2 document entitled Plaintiff's Expert
3 Disclosures dated August 11, 2014,
4 and one of the Exhibits to that is
5 for Dr. Lubit, dated August 112014,
6 which the witness has in front of
7 him.

8 Q. If you could turn to page 2,
9 under it says Sources of Information?

10 A. Yes.

11 Q. Do you have anything in your
12 file or did you look at anything in
13 relation to this case other than what's
14 listed under Sources of Information?

15 MR. SMITH: As of what time?

16 Q. As of today.

17 A. I read through about half of
18 Dr. Lamstein's deposition. I wasn't able to
19 get through all of it, because I only got
20 it recently.

21 Q. Anything else?

22 A. I don't think so.

23 Q. Any literature?

24 A. I've looked over DSM-IV to
25 bring myself back up to speed on exactly

1 R. LUBIT, M.D., Ph.D.
2 write down CT scan rather than asking a few
3 questions is not good medical practice.
4 It's sort of like saying, you know, is it
5 better to slap a child than to let him run
6 across the road? That doesn't give license
7 to hit the kid, a four-year-old, with a
8 stick until he's bleeding.

9 Q. Look at page 5 of your report.
10 Can you look at the -- I don't know if
11 that's the first full paragraph?

12 MR. SMITH: Yes.

13 A. Yes.

14 MR. SMITH: "He was brought"?

15 Q. The third -- second sentence
16 says: "Mr. Schoolcraft then saw Dr. Lwin,
17 who spoke to him for no more than ten
18 minutes." Do you see that?

19 A. Yes.

20 Q. What is the basis for your
21 statement that they did not speak for more
22 than ten minutes?

23 A. Mr. Schoolcraft's recollection.

24 Q. Based on your interview with
25 him?

1 R. LUBIT, M.D., Ph.D.
2 disorder as a result of the events of
3 October 31 through his discharge?

4 MR. SMITH: I'll object to the
5 form of the question.

6 A. How? It was by assessing the
7 presence of these symptoms, which fulfilled
8 the diagnostic criteria, that he met the
9 criteria as stated in DSM-IV and DSM-V.

10 Q. Now, based on your report what
11 alternatives did you consider to explain
12 Plaintiff's symptoms?

13 A. Well, I mean, if he hadn't met
14 the full criteria one could then diagnose
15 adjustments reaction. There's always the
16 possibility of malingering, but, you know,
17 there's always the possibility of anxiety
18 disorder, but when you meet the criteria
19 that tells you that that's the appropriate
20 diagnosis.

21 Q. My question wasn't clear,
22 that's my fault. What alternative causes
23 did you consider to explain his post --
24 what you perceive to be his posttraumatic
25 stress disorder other than the events of

1 R. LUBIT, M.D., Ph.D.

2 October 31 and following?

3 MR. SMITH: Objection to the
4 form.

5 A. There were no other events that
6 would have met the criteria. You need to
7 have an incident in which the person
8 experiences great fear, horror or dread,
9 which they're placed in severe jeopardy or
10 suffer sexual assault. I'm not aware of --
11 and that the symptoms begin with that. I'm
12 not aware of another event that would
13 fulfill those criteria and that led to
14 these symptoms.

15 He has taken actions to avoid
16 exposure to traumatic triggers, and he
17 avoids New York, and he is uncomfortable
18 with the police. He thinks about the event
19 frequently. He's got hyperarousal
20 symptoms, numbing. There isn't any other
21 event that I'm aware of that in any way
22 sort of fit these symptoms. He's, you know,
23 if he was bitten by a dog, you know, it's
24 not going -- he's not suffering -- let's
25 say he was bitten by a dog. That's

1 R. LUBIT, M.D., Ph.D.

2 certainly not the cause of it, because he's
3 scared of the police in New York City, he's
4 not scared of dogs.

5 Q. Did you engage in a
6 differential diagnosis?

7 A. Yes, to the extent possible.
8 You know, you see someone's stressed and
9 well, maybe he's PTSD, maybe it's
10 depression, maybe it's anxiety disorder,
11 maybe it's adjustments reaction, maybe it's
12 malingering, but once he meets the
13 diagnostic criteria for PTSD, and if you
14 don't think it's malingering, then it's
15 that.

16 Q. Did you administer a Life
17 Stressor Checklist?

18 A. No.

19 Q. Did you administer a Life
20 Experience Survey?

21 A. I talked with him about
22 stresses in his life, but I did not give
23 him an -- it's not my style or the style
24 of -- in general of psychiatrists to give
25 those surveys.

1 R. LUBIT, M.D., Ph.D.

2 Q. Did you administer the -- so
3 the answer's "No"?

4 A. No, I did not.

5 Q. Did you administer the Critical
6 Incident History Questionnaire?

7 A. No.

8 Q. Did you administer the Work
9 Environment Inventory?

10 A. No. I did not, I did not have
11 him do any inventories.

12 Q. Did you administer the Impact
13 of Event Scale?

14 A. No, I did not.

15 Q. Is there anywhere in your
16 report where you discuss potential
17 alternative causes for your diagnosis as to
18 cause potential alternative causes to
19 explain Plaintiff's symptoms?

20 A. He fits -- there is nothing
21 else which fits the criteria. And even if
22 there was something, then he would be
23 diagnosed with both of them.

24 Q. Do you consider that he might
25 be experiencing posttraumatic stress

1 R. LUBIT, M.D., Ph.D.

2 disorder because of his job stress that he
3 had experienced in the past?

4 A. I certainly considered that,
5 but I'm not aware of that being a
6 reasonable explanation given the timing,
7 and given the fact there was nothing else
8 that was severely threatening, and given
9 the fact that we said "Well, he got into a
10 gun fight with somebody, with a perp. But
11 he's not scared of perps, he's scared of --
12 he's worried about his bosses and being
13 seen by his bosses and the people who drove
14 up to his area to in what appears to be
15 attempts at harassment.

16 Q. So there are stressors as a
17 result of his working environment, correct?

18 A. There were, but he also
19 hadn't -- yeah, there have been stresses,
20 yes.

21 Q. And that would be like
22 unsuitable partners, in his opinion --

23 MR. SMITH: Objection to form.

24 Q. -- correct?

25 A. That could be a stress, but

1 R. LUBIT, M.D., Ph.D.

2 that's not causing PTSD.

3 Q. Or inequitable, his perception
4 of in equitable workload, correct?

5 A. That's a stress, but it
6 doesn't -- that doesn't create PTSD.

7 Q. Or supervision like, lack of
8 feedback or unequal feedback, correct?

9 A. That's a stress, but it doesn't
10 cause PTSD.

11 Q. Lack of recognition or
12 excessive paperwork?

13 A. That's a stressor, but it
14 doesn't lead to PTSD.

15 Q. So then do you agree that
16 research into PTSD has found that routine
17 work environment stressors may play an
18 important role in the development and
19 maintenance of psychological distress in
20 police officers; do you agree with that
21 statement?

22 A. It can, but he hasn't been
23 working as a police officer since that
24 time, and so it's not, it's not being
25 maintained by his continuing to be in a

1 R. LUBIT, M.D., Ph.D.

2 stressful environment.

3 Q. Okay. But you said it has
4 nothing -- withdrawn.

5 Are you aware that there's one
6 study that found that the most highly
7 ranked stressors among police were not
8 related to critical incidents defined as
9 potentially traumatic events, which may
10 cause an individual's emotional resources
11 to be overdiagnosed, but rather to concerns
12 with the work environment, including a lack
13 of consultation and communication, lack of
14 control over workload, inadequate support,
15 and in general excessive workload, are you
16 aware of such study?

17 MR. SMITH: Objection to form.

18 A. I'm not aware of the particular
19 study. May I see it?

20 Q. I'm just asking if you're aware
21 of --

22 A. What the name of --

23 Q. Something by Collins & Gibbs,
24 2003.

25 A. May I see it?

1 R. LUBIT, M.D., Ph.D.

2 Q. No. I'm asking if you're aware
3 of it sitting here today.

4 A. I don't recall the study.

5 Q. Are you aware of another study
6 that found that work environment factors
7 such as dissatisfaction with organizational
8 support predicted PTSD symptoms in police
9 officers?

10 A. Can I refresh my recollection
11 by taking a look at the study?

12 Q. Just sitting here today?

13 A. Can I see the study to refresh
14 my recollection whether I've seen it or
15 not?

16 Q. Are you aware that another
17 study --

18 A. Is that a "No"?

19 MR. SMITH: Are you withdrawing
20 your question?

21 MR. RADOMISLI: I'm not
22 withdrawing the question.

23 Q. Are you aware another study
24 found that routine work stressors were
25 associated with PTSD symptoms and that

1 R. LUBIT, M.D., Ph.D.

2 these effects were independent from and
3 larger than the effect of cumulative
4 critical incident exposure?

5 MR. SMITH: Objection to the
6 form.

7 You can answer.

8 A. I'd like to see the study.

9 Q. Are you aware of another study
10 called Routine Work Environment Stress and
11 PTSD Symptoms in Police Officers by Magnum,
12 which was published in the Journal of
13 Nervous Mental Disorders in 2009, found
14 that quote: "Work environment had the
15 strongest association with PTSD symptoms
16 above and beyond the effects of exposure to
17 duty- related critical incidents and
18 negative life events outside the police
19 service"? Are you aware of that study?

20 MR. SMITH: Objection to the
21 form.

22 A. I would like to see the study
23 so can I comment, so I can refresh my
24 memory.

25 Q. And yet nowhere in your report

1 R. LUBIT, M.D., Ph.D.

2 does it say that you considered those as
3 potential causes of PTSD, correct?

4 MR. SMITH: Objection to the
5 form. Don't argue with the witness,
6 please.

7 MR. RADOMISLI: That's not an
8 argument.

9 MR. SMITH: Yeah, it is. It's
10 an argument.

11 Q. Is it correct that your report
12 does not say that you considered those
13 alternative potential causes of his PTSD?

14 A. They are not causes of PTSD.
15 You are misunderstanding the literature.
16 You cannot get PTSD, you cannot be
17 diagnosed with PTSD unless you have an
18 incident in which there is serious threat
19 of injury or sexual assault and which
20 creates sense of horror, dread, great fear.
21 And it is true that your general life
22 situation and stress will make it more or
23 less likely that in the face of a, an
24 incident which could cause PTSD that, you
25 know, that people who are under high stress

1 R. LUBIT, M.D., Ph.D.

2 confinement of Mr. Schoolcraft, correct?

3 A. Yes, sir.

4 Q. You interviewed the Plaintiff
5 and spent at least more than an hour in one
6 session and then other sessions as well
7 questioning him and speaking with him about
8 this case; am I correct?

9 A. Yes, sir.

10 Q. And you wrote a report with
11 regard to those sessions, and in that
12 report, Doctor, am I correct, that you put
13 down the important points that both you and
14 Mr. Schoolcraft made during the course of
15 your discussion?

16 A. Yes.

17 Q. Did you ask him those questions
18 that you say are important and should have
19 been asked by the doctors at Jamaica
20 Hospital?

21 A. That would take some thinking,
22 because they're not necessarily -- because
23 as information became clear it wasn't then
24 necessary to ask him about it.

25 Q. Because they were not relevant

1 R. LUBIT, M.D., Ph.D.

2 Q. And the adults that you
3 treated, did they fall into any particular
4 category that you could talk about
5 generically? Were they professionals? Were
6 they law enforcement people? Were they
7 academics? Is there any way you could
8 characterize who the patients consisted of?

9 A. Professionals.

10 Q. Professionals. Any police
11 officers in that group?

12 A. None that I recall.

13 Q. Now, did you work in the
14 emergency room at St. Vincent's Hospital?

15 A. Yes.

16 Q. What did you do in the
17 emergency room?

18 A. Supervise residents.

19 Q. Now, after, why did you leave
20 St. Vincent's after 2003?

21 A. Mount Sinai had been courting
22 me because of my work I had done in
23 posttraumatic stress disorder.

24 Q. What work did you do on a
25 posttraumatic stress disorder?

1 R. LUBIT, M.D., Ph.D.

2 A. St. Vincent's was very involved
3 in 9/11, and Spencer Eth had been -- was,
4 is, was a specialist in PTSD. And so there
5 were papers to write that he asked me to
6 write and lectures to give around the
7 country on it and intensive trainings,
8 supervising people who, you know, went to
9 the schools to see, you know, kids who had
10 been traumatized.

11 Q. Have you written articles about
12 posttraumatic stress disorder?

13 A. Yes.

14 Q. How many such articles have
15 been published?

16 A. A few. I don't know the exact
17 number.

18 Q. Do you know the names? Can you
19 recall the names of any of the journals
20 that you published in?

21 THE WITNESS: (To Mr. Smith):

22 Could we just give him my CV --

23 MR. CALLAN: Yes.

24 MR. SMITH: I think we did.

25 Q. Now, after, did you move over

1 R. LUBIT, M.D., Ph.D.

2 Q. Just a couple. How many police
3 officers have you treated through the
4 years?

5 A. I don't recall any.

6 Q. Now, you indicated that you had
7 been retained by Mr. Smith to do an
8 evaluation in this case including a damage
9 evaluation in your report; is that correct,
10 sir?

11 A. Yes.

12 Q. Now, in your report you
13 indicated that it was your opinion that Mr.
14 Schoolcraft was suffering from
15 posttraumatic stress disorder as a result
16 of what happened to him in connection with
17 this case; is that right, sir?

18 A. Yes.

19 Q. Do you have an opinion based on
20 a reasonable degree of medical certainty as
21 to whether Mr. Schoolcraft was suffering
22 from posttraumatic stress disorder before
23 he was taken to Jamaica Hospital and
24 admitted for evaluation in -- we're talking
25 2009, right?

1 R. LUBIT, M.D., Ph.D.

2 MR. SMITH: Objection to the
3 form.

4 MR. DEVINE: Objection.

5 Q. October 31, 2009?

6 MR. SMITH: Objection to the
7 form.

8 A. Yes.

9 Q. He was suffering?

10 A. No, I have an opinion.

11 Q. Okay. And what is that
12 opinion?

13 A. He was not.

14 Q. And do you believe that he is
15 currently suffering from posttraumatic
16 stress disorder?

17 A. When I last saw him, yes.

18 Q. Is he being treated for the
19 condition?

20 A. No. Not to my knowledge.

21 Q. When did you last see him?

22 A. August was what -- I'm not -- I
23 mean I spoke to him at one of the depo's. I
24 would have to check when I saw him in
25 person and did an evaluation.

1 R. LUBIT, M.D., Ph.D.

2 Q. When you saw him did you tell
3 him that in your opinion he should be
4 obtaining some kind of medical or
5 psychiatric treatment for his condition?

6 A. I don't recall specifically
7 whether we discussed it or not.

8 Q. Can you tell me, sir, do you
9 have an opinion as to whether any of the
10 post trauma, continuing posttraumatic
11 stress disorder that you've diagnosed was
12 caused by the actions of the New York City
13 Police Department in going to his apartment
14 and entering his house and taking him to
15 Jamaica Hospital against his will, as you
16 say?

17 A. Yes, I do.

18 MR. SMITH: Objection to the
19 form.

20 A. Yes.

21 Q. And -- but before they entered
22 his house on that particular day he didn't
23 have posttraumatic stress disorder; is that
24 your testimony?

25 A. Correct.

1 R. LUBIT, M.D., Ph.D.

2 Q. Now, to reach that conclusion
3 did you review medical records relating to
4 any care and treatment he had received
5 prior to the police entering his house that
6 day?

7 A. No.

8 Q. Don't you think that would be
9 important in trying to determine when the
10 posttraumatic stress disorder began?

11 A. No.

12 Q. No. And did the -- withdrawn.

13 When you were reviewing
14 materials relating to this case did you
15 listen to any tape-recordings of his
16 encounter with the police at his house that
17 day?

18 A. I haven't.

19 Q. Were you aware that there were
20 tape-recordings of his encounter with the
21 police that day?

22 A. Yes.

23 Q. And why didn't you listen to
24 the tapes?

25 A. I, you know, have a report of

1 R. LUBIT, M.D., Ph.D.

2 what happened, and if people -- if the jury
3 decides that report that he's given me is
4 inaccurate it throws everything up in the
5 air. But I went by the description of what
6 he reported, which is in certain ways
7 similar to that of the police, which is
8 that he didn't want to come in, he was
9 handcuffed, et cetera, et cetera. He was
10 bruised in the incident.

11 Q. Well, I'm not asking you what
12 he reported to you. I'm just asking you
13 whether you had the opportunity to listen
14 to or review --

15 MR. SMITH: That's not -- you
16 asked him why he hadn't, and he was
17 answering the question when you
18 interrupted him, so I would
19 appreciate if you wouldn't interrupt
20 the witness when he's in the middle
21 of answering a question you put to
22 him.

23 MR. CALLAN: I'll try not to
24 interrupt him if you stop
25 interrupting me, and we'll get

1 R. LUBIT, M.D., Ph.D.

2 through this whole thing.

3 MR. SMITH: You stop
4 interrupting and I won't have to
5 interrupt you interrupting him, which
6 I think is something I heard
7 recently.

8 Q. Did you finish, Doctor?

9 A. I think so. I'm not sure what
10 the question is.

11 Q. Let me go back. Would you
12 agree with me, sir, that if there's a tape-
13 recording of an encounter in which you can
14 hear exactly what happened on the tape that
15 that would be a more accurate account than
16 somebody writing it down, yes?

17 A. No, not necessarily at all.
18 It's not a videotape. If I had a
19 videotape, yes.

20 Q. All right. Were you aware that
21 Mr. Schoolcraft frequently tape-records
22 other people, including police officers,
23 that he has encounters with?

24 A. Yes.

25 MR. SMITH: Objection to the

1 R. LUBIT, M.D., Ph.D.

2 form.

3 A. That he has tape-recorded
4 meetings he's attended, yes.

5 Q. Was he, when you met with him
6 was he tape-recording you?

7 A. Not that I'm aware of.

8 Q. Did you ask him if he was?

9 A. I don't think I asked.

10 Q. Were you aware that when the
11 police came into his house on October 31 of
12 2009 he had a tape-recorder on him?

13 A. Two tape-recorders, I believe.

14 Q. We'll get to the second one in
15 a minute. Were you aware he had a tape-
16 recorder on his person --

17 A. Yes.

18 Q. Were you aware that when that
19 fell out of his pocket and was discovered
20 by the police inspector, who was present,
21 he was running a second tape-recorder as
22 well?

23 A. Yes.

24 MR. SMITH: Objection to the
25 form.

1 R. LUBIT, M.D., Ph.D.

2 Q. Do you know where the second
3 tape-recorder was?

4 A. Somewhere in the room.

5 Q. Did you find anything odd about
6 that behavior, that Mr. Schoolcraft is
7 running two tape-recorders in his bedroom?

8 MR. SMITH: Objection to the
9 form.

10 Q. In the middle of the day?

11 MR. SMITH: Objection to the
12 form.

13 A. In the context of the situation
14 in which he is -- that his bosses have
15 found out that he was reporting on them to
16 IAB, that a number of officers and other
17 personnel, Fire, EMT's have come to his
18 house and demanding entrance, I think that
19 it was quite good judgment on his part to
20 have two tape-recorders going.

21 Q. In all of your years of
22 practice have you run into any other
23 patients who generally keep two
24 tape-recorders running in their bedrooms?

25 MR. SMITH: Objection to the

1 R. LUBIT, M.D., Ph.D.

2 form.

3 A. I haven't -- I don't recall
4 that, but I haven't run into a situation
5 like this.

6 Q. Now, would you expect that a
7 psychiatrist in an emergency room who would
8 be evaluating Mr. Schoolcraft would take
9 into consideration as part of the overall
10 analysis what Mr. Schoolcraft does for a
11 living?

12 A. Yes, but...

13 Q. Well --

14 A. It's --

15 Q. Yeah, the answer is "Yes"?

16 A. -- but not just as a discrete
17 entity in terms --

18 Q. Did I ask you about discrete,
19 did I say anything about discrete entities?
20 I said would you take into consideration
21 what his profession was? What his
22 occupation was?

23 A. It might be relevant.

24 Q. You mean it might not be
25 relevant?

1 R. LUBIT, M.D., Ph.D.

2 A. It might not be relevant.

3 Q. Really?

4 A. I don't know if it matters.

5 Q. Have you ever evaluated a
6 patient for possible involuntary admission
7 to a psychiatric facility without finding
8 out whether they have a job or what they do
9 for a living?

10 A. I generally ask.

11 Q. Why do you ask?

12 A. It might be relevant.

13 Q. Well, might it be relevant if
14 their job is in law enforcement and they
15 might have access to guns?

16 A. It might be relevant.

17 Q. Well, do you think it was
18 relevant in this case that he's a police
19 officer?

20 A. It is relevant since if he had
21 delusions that the police were doing things
22 they weren't doing and he had no contact
23 with the police and it was totally made up
24 in his head that would certainly be
25 relevant, and the indication he was

1 R. LUBIT, M.D., Ph.D.

2 paranoid, but he had access to the
3 information.

4 Q. He had access?

5 A. He had access to the
6 information that the police were doing
7 stuff that was inappropriate.

8 Q. Oh, you've decided that, you've
9 decided that that's true independently?

10 MR. SMITH: Objection to the
11 form of the question.

12 A. I think it's reasonable to say
13 that there are police who -- there are
14 people who fudge numbers. All you have to
15 do is look what happened in the VA system
16 recently.

17 Q. Oh, really. Does Mr.
18 Schoolcraft work for the VA system?

19 A. No. But the point is that he
20 was in a position where people don't always
21 report things accurately.

22 Q. Well, that basically puts him
23 in the same position as the 35,000 other
24 police officers who work for the New York
25 City Police Department; is that right?

1 R. LUBIT, M.D., Ph.D.

2 A. Yes.

3 Q. So there's nothing special
4 about Mr. Schoolcraft's access to
5 information, is there?

6 A. Yes. Compared to a non-police
7 officer, yes.

8 Q. All right. So we'll put him in
9 the category of police officer; is that
10 right?

11 A. I agree with you. He was a
12 police officer.

13 Q. Yeah. And do police officers
14 carry guns?

15 A. Usually but not always.

16 Q. And if a police officer fires a
17 gun at another person they could hurt that
18 person; would you agree with that?

19 MR. SMITH: Objection to the
20 form.

21 A. Any person fires a gun could
22 hurt that person.

23 Q. And a police officer would
24 certainly have the capability of hurting
25 himself with a gun under certain

1 R. LUBIT, M.D., Ph.D.

2 circumstances --

3 MR. SMITH: Objection to the
4 form.

5 Q. -- would you say that, sir?

6 MR. SMITH: Objection to the
7 form.

8 A. Anyone with access to a gun
9 could hurt themselves with that gun.

10 Q. And I know you don't have any
11 experience with police officers, but are
12 you aware that they have a higher suicide
13 rate than members of other professions?

14 MR. SMITH: Objection to the
15 form of the question.

16 A. Yes.

17 Q. How much higher?

18 A. I don't know.

19 Q. Well, don't you think it would
20 be important since you're going to be
21 testifying as an expert in federal court on
22 this issue of what the risk, the suicide
23 risk might have been in this case, to know
24 what the suicide rate is among law
25 enforcement people?

1 R. LUBIT, M.D., Ph.D.

2 MR. SMITH: Objection to the
3 form.

4 A. Not in this particular case,
5 because if it was a borderline call, then
6 that would be useful. But when you've
7 got -- but given the fact, given the data
8 that's available in the case, given that it
9 was so clear that he shouldn't have been --

10 Q. It's so clear he shouldn't have
11 been released --

12 MR. SMITH: Do not interrupt
13 him again; all right? Stop that.

14 I want you to read the question
15 back, please, and I want you to read
16 the answer.

17 And I want you to complete your
18 answer.

19 And you cut it out.

20 MR. CALLAN: I'll phrase my
21 question as I wish to phrase my
22 question.

23 MR. SMITH: No. He's answering
24 the question that you put to him;
25 okay? No, no.

1 R. LUBIT, M.D., Ph.D.

2 Q. Have you finished the question?

3 Go ahead --

4 MR. SMITH: Please read the
5 question and please read the answer
6 that was interrupted back to the
7 witness.

8 Let him finish his answer.

9 MR. CALLAN: Because we've been
10 having speechmaking done all day, and
11 it's time to stop the speechmaking,
12 Mr. Smith.

13 Go ahead, read the question
14 back, please.

15 (Whereupon, the referred to
16 question and answer were read back by
17 the Reporter.)

18 A. Given that it was so clear that
19 he did not present a substantial risk to
20 himself or others, the suicide rate is not
21 really relevant in this case. It would not
22 lead me even if it was 10 times normal.
23 Given the information available, I would
24 not have held him against his will.

25 Q. So, if I understand you, then,

1 R. LUBIT, M.D., Ph.D.
2 you're saying that if police officers had a
3 suicide rate, hypothetically, that's 10
4 times higher than it actually is in real
5 life, on the facts of this case that would
6 have made no difference to you whatsoever
7 if you were working in the emergency room
8 that night?

9 A. I would have gathered the
10 information, and given that, and if you're
11 asking key questions and speaking to IAB,
12 finding out in fact he was making
13 reasonable complaints about things that
14 happened; that he had no intention of
15 hurting anyone; that his plan of things
16 didn't go well, was to go to Texas and just
17 start over again, and with no history of
18 hurting himself or others and no thoughts
19 of doing it, I would not have held him in
20 the emergency room against his will or on
21 the ward against his will just because the
22 police have a high suicide rate.

23 Q. Well, you didn't say -- for the
24 purposes of this question you didn't say
25 high, you said 10 times the rate that they

1 R. LUBIT, M.D., Ph.D.

2 have. That would be totally irrelevant to
3 you as a psychiatrist; is that right?

4 MR. SMITH: Objection to the
5 form.

6 A. If the person is not -- if he
7 has no indications for suicide other than
8 some job stress, he's not paranoid, he's
9 not acting bizarrely, he is -- has plans on
10 what he's going to do that are positive, he
11 has no intention of hurting himself, then
12 I'm not going to put someone in the
13 hospital simply because they're, they're a
14 police officer.

15 Q. Well, this diagnosis that you
16 say the doctors at Jamaica Hospital should
17 have made, you've taken into consideration
18 that he had previously seen a Police
19 Department psychologist, who after
20 evaluating him took his gun away --

21 A. Yes.

22 Q. -- you're aware of that?

23 And as you sit here today you
24 don't even know why the gun was taken away;
25 isn't that correct, sir --

1 R. LUBIT, M.D., Ph.D.

2 MR. SMITH: Objection to the
3 form.

4 Q. -- isn't that correct?

5 A. He was stressed.

6 Q. Oh, really? And you know,
7 you've spoken to the police psychiatrist I
8 take it, and that's how you know that the
9 gun was taken away, because he was
10 stressed?

11 A. Counselor, you have no -- I
12 didn't speak to the police psychologist.
13 If I did you would know it.

14 Q. So where did the information
15 come from?

16 A. I've read much but not all of
17 her deposition.

18 Q. And she said she took the gun
19 away because he was stressed --

20 A. My impression, in a general way
21 he was stressed. He was having physical
22 symptoms, and that was my impression.

23 Q. What was he stressed about?

24 A. A variety of things.

25 Q. Like what?

1 R. LUBIT, M.D., Ph.D.

2 A. That he was in trouble, to say
3 it loosely, with, with his superiors,
4 because he wasn't making the numbers that
5 they wanted him to make, because he felt
6 what they were doing was wrong, and he was
7 reporting it to people, because the job is
8 stressful in itself.

9 Q. But he wasn't suffering from
10 posttraumatic stress disorder at that
11 point?

12 A. No.

13 MR. SMITH: Objection to the
14 form.

15 A. He had not had an incident that
16 could cause it up until that point to my
17 knowledge.

18 Q. Not to your knowledge, but you
19 haven't looked at his medical record or
20 interviewed any psychiatrists who treated
21 him previously, correct?

22 MR. SMITH: Objection to the
23 form.

24 MR. CALLAN: I'll withdraw the
25 question.

1 R. LUBIT, M.D., Ph.D.

2 Q. So with respect to the decision
3 of the Police Department psychologist to
4 order that his gun be taken away, you have
5 said that doesn't mean that she was worried
6 that he might hurt himself or somebody
7 else; is that your testimony?

8 MR. SMITH: Objection to the
9 form.

10 A. He was put on desk duty. He
11 didn't need a gun for that. She felt
12 obviously that he should not be walking a
13 beat at this time --

14 Q. I'm not talking about walking a
15 beat. I'm talking about possessing a
16 firearm.

17 MR. SMITH: That's again you've
18 interrupted him.

19 So please read the question
20 back and let him finish his answer.

21 THE WITNESS: After this
22 question I'm taking a two-minute
23 bathroom break.

24 (Whereupon, the referred to
25 question and answer were read back by

1 R. LUBIT, M.D., Ph.D.

2 the Reporter.)

3 A. She did not hospitalize him.

4 She did not deem him dangerous, because if
5 she had she would have hospitalized him.

6 Q. Did I ask you about
7 hospitalization?

8 A. No, but I'm telling you anyway.

9 Q. Yeah, well, let's try to keep
10 it to the question.

11 Now, you testify in court. You
12 do understand that there's a protocol where
13 you're supposed to respond to the question
14 that's asked?

15 MR. SMITH: You got a question.
16 Don't answer that.

17 THE WITNESS: I'm taking a
18 bathroom break.

19 (Whereupon, the witness left
20 the room at 4:07 P.M.)

21 MR. SMITH: We're going off the
22 record at 1605.

23 (Whereupon, between 4:07 P.M.
24 and 4:26 P.M. a short recess was
25 taken.)

1 R. LUBIT, M.D., Ph.D.

2 MR. SMITH: Back on the record
3 at 1645 by my clock.

4 MR. CALLAN: Which is one
5 minute --

6 MR. SMITH: Which has been
7 stipulated to two minutes different
8 from everybody else, so from the
9 inception.

10 BY MR. CALLAN:

11 Q. All right. Now, Doctor, at
12 page 11 in your report, when you were
13 dealing with the damages, you say that Mr.
14 Schoolcraft is suffering from posttraumatic
15 stress disorder as a result of the abuse he
16 suffered at the hands of the police and the
17 hospital. And in the hospital. Yes. He
18 feared for his life when the police were
19 physically abusing him. He has had
20 intrusive recollections of the abuse.

21 MR. SMITH: Has, has intrusive.

22 Q. Has intrusive recollections of
23 the abuse and the time in the hospital much
24 of the time.

25 Now, I want to focus on that

1 R. LUBIT, M.D., Ph.D.

2 sentence in which you say he has intrusive
3 recollections of the abuse and time in the
4 hospital much of the time. How do you know
5 this, sir?

6 A. He told me.

7 Q. Well, and how many times did
8 you meet with him to discuss his symptoms?

9 A. It was only one main time.

10 Q. Once?

11 A. There was one long interview,
12 and there were some other discussions. I
13 can't recall whether exact -- what
14 information I may have gotten on the phone
15 or what I may have been told when I saw him
16 at a later time, but there was one long
17 primary interview.

18 Q. And when was that?

19 A. I don't recall the date, as I
20 said before.

21 Q. Where was that long
22 interview --

23 A. My office.

24 MR. SMITH: Please let him
25 finish his whole question.

1 R. LUBIT, M.D., Ph.D.

2 Q. And how long did the interview
3 last.

4 A. I'll have to check my notes.

5 Q. Was it more than an hour?

6 A. Way more than an hour.

7 Q. More than two hours?

8 A. I'll check my notes.

9 Q. Do you have your notes with
10 you?

11 A. No.

12 Q. And what do you define as an
13 intrusive recollection?

14 A. Intrusive recollections are --
15 could be nightmares, they could be
16 flashbacks, they could be thinking about it
17 a lot. It could be having -- being very
18 upset emotionally or having physiologic
19 reaction to reminders of what occurred.

20 Q. I'm not asking you what the
21 definition of intrusive recollections are.
22 I'm asking you, sir, in his case what are
23 the intrusive recollections? Are they
24 nightmares? Are they physical symptoms?
25 What are they?

1 R. LUBIT, M.D., Ph.D.

2 A. I'm go back and I'll check my
3 report.

4 Q. It's page 11, but it doesn't
5 say in the record.

6 A. Oh, I'm sure it does say in the
7 report.

8 When he sees the type of cars
9 the police use to come up to his area he
10 thinks about his being hurt by the police,
11 including being restrained and physically
12 attacked in his apartment. Going out alone
13 also leads him to think about these times.
14 He feels that the police will come and
15 harass him again. When he took pictures of
16 the hospital and precinct with his lawyers
17 these memories were stirred up. Coming,
18 simply coming to New York City leads him to
19 feel anxious and on edge when he is not
20 with someone.

21 Q. You don't think any of this has
22 to do with the fact that he's got a lawsuit
23 for money damages against any of the
24 parties in question, do you, sir?

25 MR. SMITH: Objection to the

1 R. LUBIT, M.D., Ph.D.

2 form.

3 Q. Could it be related to that?

4 MR. SMITH: Objection to form.

5 A. I don't -- there are lots of
6 people who have lawsuits. I haven't had
7 someone before tell me that they were
8 scared of being in New York City.

9 Q. You've never treated a New York
10 City police officer before, have you?

11 A. No.

12 Q. Now, the things that you list
13 include his fear of police cars; is that
14 right, sir?

15 A. Yes.

16 Q. Now --

17 A. I'm not sure police cars. It's
18 the type of cars that people used. Yeah.

19 Q. All right. None of the doctors
20 in this lawsuit were driving police cars,
21 were they?

22 A. Not that I'm aware of.

23 Q. And you also -- the second
24 thing I think you listed that he's thinking
25 about his police harassment; is that right?

1 R. LUBIT, M.D., Ph.D.

2 A. Yes.

3 Q. And the testimony in the case
4 indicates that he was taken to the hospital
5 by the police on October 31. He didn't see
6 my client, Dr. Bernier, until November 2;
7 is that correct, sir?

8 A. Yes.

9 MR. SMITH: Objection to the
10 form.

11 Q. Could he have been suffering
12 from posttraumatic stress disorder before
13 he even saw Dr. Bernier as a result of his
14 being held in custody by the police from
15 the time he was picked up at his house
16 until November 2nd?

17 MR. SMITH: Objection to form.

18 MR. LENOIR: Objection.

19 A. By definition, posttraumatic
20 stress disorder, you have to have symptoms
21 for a month. And so he was not suffering
22 from it at that time. He may have been
23 suffering from acute at that time, having
24 acute stress reaction.

25 Q. Well, you've indicated that he

1 R. LUBIT, M.D., Ph.D.

2 previously was suffering from or at least
3 had been diagnosed as having job-related
4 stress by a Police Department psychologist,
5 correct?

6 A. Yes.

7 Q. This incident where the police
8 came to his house, took him into custody
9 against his will, obviously increased his
10 stress level; would you say that that's
11 true, sir?

12 A. Yes.

13 Q. And at what point -- do you
14 have an opinion based on a reasonable
15 degree of medical certainty --

16 A. I'm sorry, one of my kids is
17 sick.

18 Q. Oh, go right ahead.

19 MR. SMITH: We're going off the
20 record, it's 1633.

21 The record should reflect the
22 witness just took a phone call and
23 indicated one of his children was
24 sick.

25 (Whereupon, between 4:34 P.M.

1 R. LUBIT, M.D., Ph.D.
2 and 4:38 P.M. a short recess was
3 taken.)

4 MR. SMITH: Let's go on the
5 record and close this up.

6 MR. RADOMISLI: So the Doctor
7 has to leave, but more importantly,
8 we've all agreed that we haven't
9 reached our seven-hour limit, so
10 another day is going to be necessary
11 anyway, and we will schedule a
12 mutually convenient time.

13 MR. SMITH: We haven't reached
14 a seven-hour limit, and we'll do our
15 best to try to complete this
16 deposition within the seven hours and
17 then discuss what is necessary if
18 anything should go on beyond that.
19 But we agree to come back for another
20 day, but not necessarily for a full
21 day.

22 MR. RADOMISLI: That's not what
23 I meant.

24 MR. KRETZ: We're at five hours
25 and 50 minutes. Ryan and I each

1

R. LUBIT

2

history of violence. I would ask about --

3

to see if there was a pattern that would

4

indicate, let's say, bipolar disorder. I

5

would ask about all of the different

6

indicators of risk of violence from

7

MacArthur Foundation Study, which is state

8

of the art; and I would've observed him

9

during the first couple of hours as I was

10

asking him questions.

11

Q. Now, at page 11 in your report,

12

you talk about post-traumatic stress

13

disorder; and you say that, "Mr. Schoolcraft

14

is suffering from post-traumatic stress

15

disorder as a result of the abuse suffered

16

at the hands of the police and in the

17

hospital," in the first line underneath that

18

paragraph heading. Now, you made this

19

diagnosis based upon a single meeting that

20

you had with Mr. Schoolcraft in your office;

21

is that right?

22

A. Yes.

23

Q. Did you prescribe any medication

24

for him based on that finding?

25

A. I'm not his treating doctor. It

1 R. LUBIT

2 would have been inappropriate for me to
3 prescribe him medication.

4 Q. Were you of the opinion that he
5 should be medicated?

6 A. I did not even think about whether
7 medication was necessary or not. I think
8 therapy would be useful. Whether he needs
9 medication or not, I would have to think
10 about that, and, you know, ask him how his
11 symptoms have been and how they're doing on
12 my first visit to see how therapy affected
13 him over a period.

14 Q. Are there medications available to
15 treat post-traumatic stress disorder?

16 A. Not specifically. Sometimes the
17 SSRIs, selective serotonin reuptake
18 inhibitors, can be helpful with some of the
19 symptoms.

20 Q. Did you recommend continuing
21 therapy for him?

22 A. I don't recall discussing it with
23 him. I think I may have, and I don't
24 specifically recall.

25 Q. As you sit -- I'm sorry go ahead?

1 R. LUBIT

2 A. It was possible I did, and he
3 didn't have money. I would have to check my
4 notes. I don't recall.

5 Q. If he didn't have money; what does
6 that have to do with your answer?

7 A. Well, if he doesn't have money,
8 that could be a reason; but it's not really
9 that relevant to the case because it doesn't
10 mean that he doesn't have the symptoms
11 because most people with PTSD don't go for
12 therapy. Part of the symptoms, prominent
13 symptoms of PTSD, are avoidance of talking
14 about it, so people more often than not
15 don't go for therapy for years.

16 Q. My only question is, do you think
17 he needed therapy?

18 A. Yes. I think therapy might have
19 been helpful to him.

20 Q. As you sit here today, do you know
21 if he ever got therapy?

22 A. No, I do not.

23 Q. Do you think if he got proper
24 therapy that could resolve his problems?

25 A. I don't think it's going to

1 R. LUBIT

2 resolve his problems. I think that it might
3 ameliorate some of his symptoms.

4 Q. Which symptoms might it
5 ameliorate?

6 A. The interest of recollections
7 might -- well, hopefully decrease. His
8 avoidance, some of his anxiety, but what
9 happened to him was so serious and
10 particularly given the doctors at the
11 hospital in my professional opinion behaving
12 very inappropriately in light of the police
13 reportedly going to serve him with things
14 and having their cars go up to near his
15 house, that it's going to be very hard for
16 him to cease being very anxious anywhere
17 around New York.

18 Q. Are you saying that he's going to
19 be afraid of cars; is that why you mention
20 cars?

21 A. Police.

22 Q. He's going to be afraid of police
23 cars?

24 A. I think he's made anxious by the
25 fact that he believes the police drove up to

1 R. LUBIT

2 his area to serve him with papers and may
3 have been watching him.

4 Q. Are you saying that you think he
5 has a fear of police cars or the police as a
6 result specifically of this incident?

7 A. Yes, fear of police.

8 Q. Fear of police?

9 A. Yes.

10 Q. And this is the fault of the
11 doctors at Jamaica Hospital?

12 A. What I said was that what happened
13 at Jamaica Hospital made the PTSD worse.

14 Q. So your testimony is that he had
15 PTSD before he ever went to Jamaica
16 Hospital?

17 MR. SMITH: Objection to the form.

18 A. No. He didn't have PTSD before he
19 went to Jamaica Hospital. You have to have
20 symptoms for a month for it to be PTSD; but
21 the events at Jamaica Hospital, I think,
22 made the PTSD worse than it would have been
23 had they believed him, listened to him, and
24 done a proper evaluation and appropriately
25 sent him on his way.

1 R. LUBIT

2 Q. If hypothetically they had
3 appropriately sent him on his way, would
4 you, in your opinion, think that he might
5 still have PTSD based upon what the police
6 department did to him or so he says?

7 MR. SMITH: Objection to form.

8 MR. CALLAN: I'll rephrase it.

9 Q. Accepting Mr. Schoolcraft's
10 allegations regarding what the police
11 department did to him before he came to
12 Jamaica Hospital, could that alone have been
13 enough in your opinion to cause PTSD in him?

14 A. Yes.

15 Q. Did you interview him about
16 whether he had ever had PTSD symptoms prior
17 to his employment at the New York City
18 Police Department?

19 A. I don't specifically remember the
20 words I used, but it is certainly my custom
21 in these situations to ask about the
22 presence of the symptoms before and after
23 the event in question and to see how he has
24 changed so -- and I actually do,
25 specifically, say he startled more than he

1

R. LUBIT

2

used to, he is more irritable than he used

3

to be, and I would have made it clear that I

4

meant before the incident. He's anxious

5

when in New York if he is alone. He was a

6

policeman before, so that certainly

7

indicates it was after this event that he

8

became very anxious about being in New York.

9

He avoids talking about what occurred,

10

meaning with referring to the police in the

11

hospital, and he has intrusive recollections

12

of the abuse and time in the hospital; so

13

all of these indicate that there was a

14

marked change in him, a rapid development of

15

symptoms after the problems with the police

16

in the hospital.

17

Q. Well, I think you said at the last

18

deposition in this case that you had

19

described the job of a New York City police

20

officer as an extremely difficult and

21

dangerous job; do you remember saying

22

anything along those lines?

23

A. I don't recall what I said. I

24

would be happy to review my deposition

25

transcript if you have it.

1 R. LUBIT

2 Q. Well, do you think being a New
3 York City police officer is a dangerous job?

4 A. It can be.

5 Q. Did you ask Mr. Schoolcraft if he
6 had ever felt anxious when he was out on the
7 street patrolling as a New York City police
8 officer prior to this incident?

9 A. It's not relevant, and I don't
10 recall asking about that. We all feel
11 anxious at times. He is more globally
12 irritable, startles, dysphoric since this
13 event, and he reports intrusive
14 recollections of the abuse by police and the
15 time in the hospital. He did not report
16 intrusive recollections of other things that
17 occurred while he was working as a police
18 officer or of any other things in his life.

19 Q. And you asked him about that; you
20 asked him about prior, his prior life, and
21 whether he startled at all; did you ask him,
22 "Have you ever startled in the past?" Have
23 you ever asked him that?

24 MR. SMITH: Can we have one
25 question at a time, please.

1 R. LUBIT

2 A. I specifically wrote he startles
3 more than he used to. He is more irritable
4 that he used to.

5 Q. How often did he startle in the
6 past?

7 A. I don't have a specific number.

8 Q. How often was he anxious in the
9 past?

10 A. I don't have a specific number.

11 Q. But he was anxious in the past?

12 A. I assume that he was at times.

13 Q. What was he anxious about in the
14 past?

15 A. I don't know and it's --

16 Q. Well, when he started, was he --

17 MR. SMITH: Wait, let him answer
18 the question.

19 MR. CALLAN: He said he doesn't
20 know, I think.

21 Q. Was there something else you
22 wanted to add?

23 A. I said he was anxious when in New
24 York if he is alone. He was able to be in
25 New York before walking a beat and didn't

1

R. LUBIT

2

report anxiety being problematic for him

3

then, and now he reports great anxiety with

4

specific fears about the police hassling

5

him. Whether he was anxious before, doesn't

6

make a difference. The fact is he has

7

specific anxieties, intrusive recollections,

8

and avoidance of things directly related to

9

the things that happened with the police and

10

in the hospital.

11

MR. CALLAN: I have no further

12

questions. Can we take a break for two

13

minutes.

14

(Whereupon, a short recess was

15

taken.)

16

EXAMINATION BY

17

MR. SHAFFER:

18

Q. Good morning, Doctor. My name is

19

Robert Shaffer. I represent the City of New

20

York and most of its employees that are

21

named in this lawsuit with the exception of

22

one.

23

MR. SMITH: Go on the record at

24

16:01.

25

Q. I have a few questions for you. I

1 R. LUBIT

2 just ask if you don't understand my
3 question, just let me know. I'll try to
4 rephrase it. If you don't hear me, let me
5 know. I'll try to repeat it, understand?

6 A. Yes.

7 Q. Earlier when Mr. Callan was
8 questioning you, you said that if you were
9 in the emergency room when plaintiff was
10 brought to the hospital, you would ask
11 certain questions?

12 A. I would ask many questions. I
13 mentioned some of them at that time.

14 Q. Understood. And you would ask
15 various people these different questions?

16 A. Yeah. There were different
17 people. I would've asked more from the
18 police, emergency medical people, as well as
19 the client.

20 Q. And while you were asking all of
21 these questions and speaking to these
22 different people, plaintiff would have been
23 confined in the emergency room?

24 A. Up until a certain point, yes. I
25 mean, I would've up until the point that I

1 R. LUBIT

2 thought he was -- did not meet commitment
3 criteria.

4 Q. And you don't believe that he met
5 commitment criteria; is that correct?

6 A. Yes.

7 Q. And you're basing that upon what
8 he told you; is that correct?

9 A. That's based upon what he told me.
10 It's based upon all the records that I
11 reviewed. It is based upon -- to a large
12 extent, it's based upon the hospital record.

13 Q. If what Mr. Schoolcraft told you
14 was not true, some or all of it was not
15 true, would your opinion have changed in any
16 way?

17 MR. SMITH: Objection to the form.

18 A. It depends how it changed. If I
19 were to find out that he had a history of
20 violence and a history of psychosis and of
21 rapid decompensation into psychosis and if
22 this was similar signs of what he usually
23 has, that would create a difficult situation
24 I would have to think more about; but the
25 things that he told me are in no way

1

R. LUBIT

2

necessary. If I was not able to speak to

3

him and I was just able to read the

4

depositions of the doctors and the hospital

5

record, I would've concluded to a reasonable

6

degree of medical certainty that he was not

7

committable.

8

Q. So what you're saying is the

9

opinion that you formed is based in no way

10

on what plaintiff told you?

11

MR. SMITH: Objection to the form.

12

A. I can't -- I didn't say in no way,

13

but the material that was most important to

14

me overwhelmingly was what I saw from the

15

hospital record and the depositions of the

16

doctors, what they saw, what they asked,

17

what they were thinking, the information

18

they gathered. You know, if you were to

19

tell me -- if he had told me at an interview

20

that, you know, actually he had just bought

21

a gun that he had successfully hidden and he

22

was planning to shoot Lieutenant Caughey,

23

then I would've felt that, yup, he should be

24

committed at that time. But -- though they

25

didn't have the data to do it; but his

1 R. LUBIT

2 description of what occurred was of very
3 little importance to me. It was based on
4 what they wrote and what they said. They,
5 meaning the doctors.

6 Q. Is any of what the doctors wrote
7 and said as far as you understood it to be
8 based upon what plaintiff told them?

9 A. I mean, they did interview him
10 albeit my understanding is that it was
11 brief. Particularly the resident who
12 interviewed him did not spend a lot of time
13 with him. Dr. Bernier and Patel (phonetic)
14 did not spend a lot of time with him when
15 they were first involved in the case; so I
16 certainly considered what they wrote he said
17 and also all the things that he had gotten
18 from other sources.

19 Q. So assuming what they wrote about
20 what he said was transcribed accurately, but
21 that what he told them was not true so they
22 wrote down a false statement given by
23 plaintiff, would that change your opinion
24 about this in any way?

25 MR. SMITH: Objection to the form.

1 R. LUBIT

2 A. I've gotten lost I'm afraid in
3 terms of it's too -- you need to talk about
4 specific things that he said that were
5 false; but look at many, many different
6 things before you make such a determination.
7 And they failed to gather the basic
8 information that one needs to get, and they
9 failed to reasonably analyze the
10 information.

11 Q. I'll ask my question again. So
12 they took information from plaintiff,
13 correct?

14 A. Yes.

15 Q. At some point?

16 A. Yes.

17 Q. If plaintiff gave them information
18 that was untrue and you learned that
19 throughout your evaluation of him and of
20 this case, would that change your opinion?

21 MR. SMITH: Objection to the form.

22 A. I need to know what information he
23 gave them that was untrue.

24 Q. So he could have been untruthful
25 about certain things and that wouldn't

1 R. LUBIT

2 change your opinion at all?

3 MR. SMITH: Objection to the form.

4 A. At all, what do you mean by at all
5 and what information?

6 Q. So you just said you would need to
7 know what information he was untruthful
8 about?

9 A. Yes. I mean, if he said that he
10 never had a mental breakdown and had never
11 been violent with anyone and, in fact, he
12 was presently violent and had murderous
13 fantasies, if I were to find out that, that
14 would be of deep concern to me.

15 Q. But there are certain other pieces
16 of information that if plaintiff was
17 intentionally untruthful about those pieces
18 of information, that would not change your
19 opinion?

20 MR. SMITH: Objection to the form.

21 A. They may be pieces of information
22 that would not change my ultimate opinion
23 that he did not need commitment. What I am
24 sure about is that the data they collected
25 did not add up to a need for a commitment

1 R. LUBIT

2 and that they grossly failed to gather
3 crucial information.

4 Q. You mentioned that you took notes
5 of your initial interview with plaintiff; is
6 that right?

7 A. Yes.

8 Q. Do you recall how many pages of
9 notes you took?

10 A. No.

11 Q. Was it more than one?

12 A. Oh, yeah.

13 Q. More than ten?

14 A. Probably.

15 Q. The handwritten or typed?

16 A. Handwritten.

17 Q. And you still have copies of those
18 notes?

19 A. Did I bring them? May I ask --

20 MR. RADOMISLI: You didn't bring
21 them?

22 Q. Is that something you typically
23 discarded at any point in time?

24 A. I usually do not discard that.

25 Q. Now, you said you met with him,

1 R. LUBIT

2 you think, one other time after your initial
3 interview; is that right?

4 A. I spoke to him on the phone, I
5 think, to fill in some pieces; and then I
6 saw him at one of the depositions of one of
7 the doctors; and again, I don't remember
8 what -- whether I just said hello or whether
9 I may have asked a couple of questions. I
10 don't recall.

11 Q. Do you recall if on either of
12 those occasions either on the phone or at
13 the deposition that you took any notes?

14 A. I think if he told me something,
15 something of significance, I would normally
16 have written it down.

17 Q. Now, you've been qualified as an
18 expert in other cases before, correct?

19 A. Yes.

20 Q. Have you ever been qualified as an
21 expert on police practices?

22 A. No.

23 Q. Have you ever taught any courses
24 on police practices or procedures?

25 A. No.

1 R. LUBIT

2 Q. Have you ever written or published
3 any articles about police practices and
4 procedures?

5 A. No.

6 Q. On page 23 of your report, there's
7 a heading, "Actions of the Police," on
8 October 31, 2009; do you see that heading?

9 A. Yes.

10 Q. And in there you give, I guess,
11 what I would describe as an opinion; but you
12 make statements about the actions of the
13 police; is that correct?

14 A. Yes.

15 Q. How did you arrive at the opinions
16 that you stated under the heading "Actions
17 of the Police" on October 31, 2009?

18 A. I do know something about how to
19 handle patients, and I've seen many patients
20 handled by the police in the EMU personnel;
21 and, I think, it's pretty basic logic that
22 says if you've got somebody who has -- who
23 you believe has dangerously high levels of
24 blood pressure, the last thing in the world
25 you want to do is get involved in a physical

1 R. LUBIT

2 altercation with the person.

3 Q. Is that opinion based on any
4 knowledge of standard police practices or
5 procedures?

6 A. It's based on medical procedures
7 and medical knowledge.

8 Q. Do you have any knowledge of
9 police practices as they pertain to
10 providing medical treatment to someone that
11 is in need?

12 A. No. But I think it stands to
13 reason that I would hate to say that -- I
14 would hate to have found out that police
15 practices are that it's okay to get into a
16 fight and assault a man who is doing nothing
17 other than having high blood pressure and
18 doesn't want to go into the emergency room.

19 Q. Now, the opinions contained under
20 the heading at the middle of page 23, what
21 specific individuals are you referring to?

22 MR. SMITH: Objection to the form.

23 A. I do not -- am not referring to
24 specific individuals. I'm simply saying
25 that if, in fact, the police roughed him up

1 R. LUBIT

2 and it appears that they did give him
3 bruises that were reported in the emergency
4 room, that this was a horribly inappropriate
5 thing to do with someone who you think has
6 dangerously high levels of blood pressure,
7 much better to leave the person alone or
8 talk with him or get neighbors to talk with
9 them or get family or whatever than to
10 assault him, drive his blood pressure up
11 higher, and possibly cause him to stroke out
12 at that moment.

13 Q. If the police would've left
14 Mr. Schoolcraft alone and if he were to have
15 either had a stroke or a heart attack, would
16 your opinion as to their actions be that it
17 was appropriate?

18 MR. SMITH: Objection to form.

19 A. Well, if he -- you know, in
20 hindsight, we know better what to do than at
21 the moment; and, you know, there are times
22 when we wish we had done something else.
23 It's -- if a parent refuses to let their
24 12-year-old go out to a friend's house and I
25 was doing a custody case, we would think

1 R. LUBIT

2 Q. Did Mr. Schoolcraft ever say to
3 you that he had been afraid that he would
4 be sexually assaulted?

5 A. No.

6 Q. In this case, when you
7 diagnosed Post Traumatic Stress Disorder to
8 Mr. Schoolcraft, what was the basis for
9 threat of severe injury or death?

10 A. He thought he would be
11 physically injured by the police when they
12 took him off the bed, put him on the
13 ground, turned him over, et cetera.

14 Q. Nothing that occurred in the
15 hospital then; is that correct?

16 MR. SMITH: Objection to the
17 form.

18 A. In the hospital, the issue of
19 his restraints were an issue.

20 Q. Anything else other than the
21 handcuffs?

22 A. I think the hospital issue also
23 just intensified what happened in his
24 apartment. That rather than things being
25 quickly corrected, he continued to be

1 R. LUBIT

2 restrained to the point that, and the
3 police were continuing to be able to do --
4 the wrist issue with the restraints is very
5 concerning, they were able to continue to
6 do that. And I think all of this together
7 put him in significant fear for his
8 physical safety.

9 Q. Leaving aside the wrist
10 restraints for the moment, was there
11 anything else that occurred in the hospital
12 that he said to you led him to believe that
13 there was a threat of severe injury, i.e.,
14 fearing for his life or death?

15 A. I don't think there was any
16 other incident in the hospital. But the
17 fact that he was restrained in the hospital
18 rather than things being quickly corrected
19 and quickly ending did exacerbate what
20 would have happened to him had the hospital
21 said he's fine, let him go.

22 Q. How do you know that?

23 A. My clinic judgment that when,
24 it is well known that when a bad situation
25 and traumatic incident continues for a

1 R. LUBIT

2 period and the person isn't, or the person
3 continues to have any difficult
4 circumstance after a trauma, that is very
5 negative for their recovery. And that it
6 is extremely important to very quickly get
7 someone into a, an environment in which
8 they feel safe. How the person is
9 supported and treated after a trauma is
10 likely as important as the intensity of the
11 trauma itself in determining whether the
12 person will have Post Traumatic Stress
13 Disorder. I think you will find that in my
14 writings.

15 Q. He didn't have Post Traumatic
16 Stress Disorder on October 31st?

17 MR. SMITH: Objection.

18 A. Not at that moment. He had the
19 trauma that led to the PTSD. The point is
20 after the PTSD trauma, it is extremely
21 important that the person get into a
22 benign, safe atmosphere very quickly. And
23 without that, the chance of them developing
24 PTSD is much higher.

25 Q. Once the police left, wouldn't

1 R. LUBIT

2 being in the hospital be a safe
3 environment?

4 MR. SMITH: Objection to the
5 form.

6 A. I don't, he didn't experience
7 it as a safe, benign, supportive
8 environment. That was a place he was being
9 held against his will.

10 Q. Do you agree that paranoia
11 substantially increases the risk of
12 violence?

13 A. Yes.

14 Q. I referred to your book
15 earlier. I guess that deals with conflict
16 in the workplace; is that fair to say?

17 A. Yes.

18 Q. And how people should deal with
19 their supervisors in the course of that
20 conflict?

21 A. Yes.

22 Q. Do you believe, in your
23 opinion, that Adrian Schoolcraft
24 appropriately dealt with his supervisors
25 based on his actions in the case?

1 R. LUBIT

2 MR. SMITH: Objection to the
3 form.

4 A. It is too, I would need to have
5 it narrowed down. And specify what you
6 mean by "dealt with." What actions in
7 terms of, it's too broad a question.

8 Q. Let's start with tape recording
9 things; do you believe that, that was
10 appropriate?

11 MR. SMITH: Objection to the
12 form.

13 A. I, I do not believe that his
14 tape recording is a significant sign of
15 psychosis.

16 Q. I am asking you, do you believe
17 it was an appropriate way for him to deal
18 with his workplace conflict?

19 MR. SMITH: Objection to the
20 form.

21 A. I am not sure that is an
22 appropriate question to ask me.

23 Q. Does that mean you can't answer
24 it?

25 A. Given what set of circumstances